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10/780,069	02/17/2004	Richard Emil Kajander	7362	9467

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JOHNS MANVILLE
Legal Department
10100 West Ute Avenue
Littleton, CO 80127

EXAMINER

SALVATORE, LYNDIA

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD EMIL KAJANDER

Appeal 2009-013598
Application 10/780,069
Technology Center 1700

EDWARD C. KIMLIN, BRADLEY R. GARRIS, and
PETER F. KRATZ, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 24, 26-30, and 39-44 under 35 U.S.C. § 103(a) as being unpatentable over Jaffee (US Patent 6,187,697 B1, issued February 2001) in view of Leclercq (US 2003/0175478 A1, published September 2003).

We REVERSE.

Appellant claims a laminate comprising a fibrous mat having a coating wherein the coating has an exposed surface with "a surface smoothness Ra of no greater than about 13 microns" and wherein the coating comprises clay and inorganic particles with "at least 95 wt. percent of the particles of clay and inorganic filler having a particle size of less than 200 mesh" (claim 24).

Representative claim 24, the sole independent claim on appeal, reads as follows:

24. A laminate comprising a first layer bonded to a second layer comprising a fibrous mat containing a major portion of non-cellulosic fibers having an average fiber diameter of at least about 10 microns and up to 20 microns, the fibrous mat having a coating on a surface, the coating amounting to about 8 to about 20 grams per square foot, the coating having an exposed surface having a surface smoothness Ra of no greater than about 13 microns, the coating comprising a filler comprising a minor amount of clay, a minor amount of polymeric binder and a major amount of inorganic filler, at least 95 wt. percent of the particles of clay and inorganic filler having a particle size of less than 200 mesh .

Appellant correctly argues that Jaffee does not "reasonably suggest coatings containing particles, at least 95 wt. percent of which are less than 200 mesh" as required by claim 24 (App. Br. 6; underlining deleted).

According to the Examiner, this claim requirement is satisfied by Jaffee's

teaching that "all of the particles have a size ranging from minus 40 and plus 100 mesh" (Ans. 3, 6).

The Examiner is incorrect. Contrary to the Examiner's belief, smaller mesh numbers yield larger, not smaller, particle sizes. Stated differently, the independent claim 24 limitation "a particle size of less than 200 mesh" includes a particle size of less than 325 mesh (*see* dependent claim 27). Therefore, the Examiner was clearly erroneous in finding that the claim 24 particle size limitation is satisfied by Jaffee's disclosure of 40-100 mesh particle size.

This incorrect finding also undermines the Examiner's position that Jaffee's coating inherently possesses the smoothness characteristic required by claim 24, since the inherency position is explicitly premised on the incorrect finding (Ans. para. bridging 3-4).

For the above stated reasons, we cannot sustain the Examiner's § 103 rejection of all appealed claims over Jaffee in view of Leclercq.

The decision of the Examiner is reversed.

REVERSED

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